

No. 11,165

IN THE

United States Circuit Court of Appeals
For the Ninth Circuit

EDGAR RUGGIERO and AMERIGO BELLUOMINI,
Appellants,
vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

The appellants Edgar Ruggiero and Amerigo Belluomini were tried without jury before the United States District Court for the Northern District of California upon informations charging them with the unlawful acquisition, possession and control of certain forged and counterfeited red meat ration stamps. Copies of the informations are set forth at page 2 and page 6 of the transcript of record. The appellants were adjudged guilty on all counts and appealed from the judgment of the Court below.

STATEMENT OF FACTS.

The facts are substantially those set forth in the opening brief for appellants, at pages 10 to 20, inclusive. In brief, however, they are the following:

Early in May of 1945, the appellant Ruggiero, manager of the Tunnel Market, San Francisco, California, purchased 8700 counterfeited and forged ration stamps, which stamps had a ration point value of 87,000, for a price of \$1820.00. After he received the stamps he turned 5000 of them over to the appellant Belluomini, who was associated with him in another retail meat market business, and deposited the remaining 3700 in his ration bank account at the West Portal Branch of the Bank of America, San Francisco, California. The appellant Belluomini, who operated a retail butcher shop at 37th Avenue and Balboa Street, San Francisco, California, transferred 2500 stamps, having a 25,000 ration point value, to one Leo Massaglia, an employee at his retail butcher shop, who usually prepared his ration currency deposit slips. These stamps were in fact deposited at the Bank of America in the 3700 block of Balboa Street, in San Francisco. The appellant Belluomini later directed his employee Massaglia to destroy the remaining 2500 counterfeited and forged ration stamps. There is no evidence in the record that either appellant was told of the counterfeit nature of these documents.

ARGUMENT.

ALL OF THE CONTENTIONS STATED BY APPELLANTS UNDER I OF THEIR BRIEF HAVE BEEN SETTLED ADVERSELY TO THE APPELLANTS BY THE DECISIONS OF THE SUPREME COURT AND THE CIRCUIT COURTS OF APPEALS.

(a) The statutory basis for the authority to ration is found in Section 301 of Title III of the Second War Powers Act set forth in the footnotes at pages 30-33 of the appellant's brief.

The pertinent language of that section is as follows:

“(a)(2) * * * Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense.

* * * * *

“(5) Any person who willfully performs any act prohibited, or willfully fails to perform any act required by, any provision of this subsection (a) or any rule, regulation, or order thereunder, whether heretofore or hereafter issued, shall be guilty of a misdemeanor, and shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

* * * * *

“(8) The President may exercise any power, authority, or discretion conferred on him by this subsection (a), through such department, agency, or officer of the Government as he may direct and in conformity with any rules or regulations which he may prescribe.”

The contention of the appellant that "any material" must be held to exclude food is somewhat difficult to understand. The statement in appellant's brief at page 31 that "Congress only made it a crime to violate the provisions of the Section relating to contracts for the building of warships and planes and priorities and allocations thereof" is simply not borne out by the very text of the section printed at pages 30-33 of the appellant's brief, and needs no further discussion.

This Court has only recently recognized the validity of Ration Order No. 8 in a civil case in which it held that the Administrator was entitled to an injunction against *sales of rationed meats without obtaining point values*. *Bowles v. Quon*, 154 F. (2d) 72.

Criminal convictions for the violation of food rationing orders have been sustained in *Coleman v. United States*, 153 F. (2d) 400 (C.C.A. 6) (meat ration points), and *United States v. Schnoll*, 142 F. (2d) 704 (C.C.A. 7) (ration points for canned goods).

The constitutionality of the machinery set up by the Act, the Executive Orders, and orders for rationing materials generally was upheld by the Supreme Court in *L. P. Steuart v. Bowles*, 322 U. S. 398, 64 S. Ct. 1097, and the constitutionality of Ration Order No. 16, relating to dealers in industrial foods, was upheld by a three-judge court in *Walter Brown and Sons v. Bowles*, 58 F. Supp. 323.

In numerous other cases the courts have upheld the Administrator's right to suspend license of food

dealers for violation of food rationing orders. Among such cases are:

Bowles v. Lee's Ice Cream, Inc., 148 F. (2d) 113 (C.A.D.C.) (restaurant case);
Country Garden Market v. Bowles, 141 F. (2d) 540 (C.A.D.C.), cert. den. 64 S. Ct. 1264 (Food Ration Order No. 16);
Gallagher Steak House v. Bowles, 142 F. (2d) 530 (C.C.A. 2), cert. den. 64 S. Ct. 1288 (restaurant case).

Appellant's contention that Congress could not validly impose criminal liability for a violation of a regulation or order of the Administrator has been settled adversely to the appellant by the decision of the Supreme Court in *Kraus Bros. v. United States*, 66 S. Ct. 705. We quote footnote 4 from the opinion of the Supreme Court:

"4. Section 205(b) is somewhat inartistically drawn. It does not specifically impose criminal liability on those who violate the regulations and orders of the Administrator. But the hurdle of *United States v. Eaton*, 144 U.S. 677, is cleared by the reference in Section 205(b) to Section 4, which makes it unlawful, among other things, to sell or deliver any commodity in violation of any regulation or order. See *In re Kollock*, 165 U.S. 526; *United States v. Grimaud*, 220 U.S. 506; *United States v. George*, 228 U.S. 14; *Singer v. United States*, 323 U.S. 338. Congress has subsequently emphasized this reference even more clearly when in adding Section 204(e)(1) to the Emergency Price Control Act, it spoke of a criminal proceeding 'brought pursuant to section 205

involving alleged violation of any provision of any regulation or order issued under section 2.' Section 107(b), Stabilization Extension Act of 1944, 58 Stat. 639. See also Section 6, Act of June 30, 1945, Public Law 108, amending Section 204(e)(1) of the Emergency Price Control Act."

In *Randall v. United States*, 148 F. (2d) 234 (C.C.A. 5), cert. den. 65 S. Ct. 1579, the Court upheld a criminal conviction for dealing in gasoline ration coupons, stating:

"The Congress acted within constitutional bounds when it delegated the power to fix and define crimes and penalties for crimes, as provided in the Act here under consideration. Such legislation was not an unauthorized delegation of legislative power. *Shreveport Engraving Co. v. United States*, 5 Cir., 143 F. 2d 222, certiorari denied, 65 S. Ct. 82; *United States v. Randall*, 2 Cir., 140 F. 2d 70; *O'Neal v. United States*, 6 Cir., 140 F. 2d 908; 151 A.L.R. 1474; *Gallagher's Steak House v. Bowles*, 2 Cir., 142 F. 2d 530; *Hirabayashi v. United States*, 320 U. S. 81, 63 S. Ct. 1375, 88 L. Ed. 1774; *Fred Toyosaburo Korematsu v. United States*, 323 U. S. 214, 65 S. Ct. 193."

(b) The contention of the appellants that the informations are defective because of the failure to charge knowledge that the ration stamps were counterfeit, is without merit.

The informations were predicated on Sections 2.5 and 2.6 of General Ration Order No. 8, which provide:

"Sec. 2.5. No person shall acquire, use, permit the use of, transfer, possess or control any counterfeited or forged ration document under circum-

stances which would be in violation of Section 2.6 if the document were genuine or if he knows or has reason to believe that it is counterfeited or forged."

"Sec. 2.6. Acquisition, use, transfer or possession of ration document. No person shall acquire, use, permit the use of, possess or control a ration document except the person, or the agent of the person, to whom such ration document was issued, or by whom it was acquired in accordance with a ration order or except as otherwise provided by a ration order. No person shall use or transfer a token or other ration document except in a way and for a purpose permitted by a ration order."

Exactly the same contention was made in *United States v. Tobin*, 149 F. (2d) 534, cert. den., 66 S. Ct. 46. The Court said (at page 536):

"We are clearly of the opinion, however, that it was not necessary for the government to allege or prove such knowledge under the circumstances of the instant case. The fallacy of defendant's contention lies in his failure to recognize that Sec. 2.5 is directed at two distinct situations: (1) where the counterfeited or forged coupons are possessed or transferred under circumstances which would be a violation of Sec. 2.6 if they were genuine, and (2) where such coupons are possessed or transferred with knowledge or reason to believe that they are counterfeited or forged.

"The charge was predicated upon the first situation. Proof of knowledge was therefore unnecessary. Obviously, Sec. 2.6 is directed at the possession and use of genuine coupons acquired in a

manner other than as provided by regulation. Evidently it does not relate to counterfeited or forged coupons. This is the purpose of Sec. 2.5, and under the first situation described in this section it is a violation if such coupons are acquired under circumstances which would be a violation of Sec. 2.6 if they were genuine. In other words, the use or possession of such coupons under such circumstances is unlawful, irrespective of any knowledge as to their spurious character."

- (c) The informations were sufficient in stating that the defendants had not acquired the ration documents in accordance with the provisions of any ration order and had transferred them otherwise than in a way permitted or for a purpose permitted by any ration order.

In practically every criminal conviction for the violation of ration orders the informations were couched in the same or similar language. See particularly *Randall v. United States*, 148 F. (2d) 234 (C.C.A. 5), cert. den. 65 S. Ct. 1579, and *United States v. Tobin*, 149 F. (2d) 534 (C.C.A. 7), cert. den. 66 S. Ct. 46.

- (d) The evidence was sufficient to justify the conviction.

The only particular in which the appellants claim a lack of evidence to justify a conviction was the lack of knowledge on the part of the appellants that the ration stamps mentioned in either information were counterfeit. (Appellants' Opening Brief, pages 47, 48.) This argument regarding a proposed deficiency in proof is completely answered under the authority of *United States v. Tobin*, supra.

CONCLUSION.

It is respectfully submitted that the informations are sufficient to sustain the conviction, that the lower Court committed no error, and that the judgment should be affirmed.

Dated, San Francisco, California,
June 5, 1946.

Respectfully submitted,

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Attorneys for Appellee.

(Supplement Follows.)

Supplement

REVISED RATION ORDER 16.

Part 1407, Rationing of Food and Food Products:

“Sec. 2.3. How points are given up by a consumer—

(a) A consumer uses stamps. A consumer gives up points, when he acquires foods covered by this order, by surrendering red ‘stamps’ from his War Ration Book Four.

“(b) Stamps may be used only during certain periods. Each stamp in War Ration Book Four is good only during a certain period, and a consumer may use it only during that period. The combination of letter and number printed on the stamps serves to indicate the time when the stamp may be used by consumers. The periods during which stamps in War Ration Book Four may be used will be fixed in a supplement to this order. (Transfers of ‘meat’ by farm slaughterers to consumers, covered in section 3.2, are excepted from this rule.)

“(c) General rules for the use of stamps by consumers. A consumer must give up stamps worth exactly the point value of the foods covered by this order which he acquires, except that fractional amounts are to be handled in the way described in section 10.6. Red stamps in War Ration Book Four are worth 10 points each, regardless of the number printed on them. Stamps must be given up at the time the foods are acquired. The stamps may be used by a consumer only if torn out of the war ration book in the presence of the person who is selling or trans-

ferring the foods. A stamp may be used only to get foods covered by this order for the consumer from whose book it is taken, or for use at a table at which he eats.

“(d) *A consumer also uses certificates and ration coupons.* Any consumer to whom a ‘board’ issues a ‘certificate’ or ration coupon may use it to acquire foods covered by the order, just as stamps are used. However, a consumer may give up the certificate or ration coupon at or before the time when the foods are acquired. The number of points a certificate or ration coupon is worth is shown on that certificate or ration coupon. A consumer to whom a certificate has been issued must sign his name on the back before he may use it.”

“Sec. 10.1. *Only retailers, wholesalers, and primary distributors may transfer foods covered by this order.*

(a) Beginning March 29, 1943, only ‘retailers,’ ‘wholesalers,’ and ‘primary distributors’ may sell or ‘transfer’ ‘foods covered by this order.’ (Certain transactions between ‘consumers,’ covered in section 2.2 are excepted from this rule. Certain other exceptions are covered in Article III and Article XI.)”

“Sec. 10.3. *Transfers to retailers, wholesalers and primary distributors after April 10, 1943 may be made only for points.* (a) Beginning April 11, 1943, no person may sell or transfer foods covered by this order to a retailer, wholesaler, or primary distributor, and no retailer, wholesaler or primary distributor may buy or acquire those foods, unless points are given up in the way this order requires. (The word

'transfer', as it is defined, means to sell, as well as to transfer in other ways. The word 'acquire' means to buy, as well as to get in other ways. Therefore, the only words which will generally be used, in later sections, are 'transfer' and 'acquire'.)

"The rules covering various kinds of transactions are set forth in the sections which follow."

"Sec. 10.4. *How foods covered by this order are transferred to consumers*—(a) *General*. Foods covered by this order may be transferred to a consumer, and may be acquired by him, only if he gives up to the seller or transferor, points exactly equal to the point value of the food transferred, except that fractional amounts are to be handled in the way described in section 10.6. (Certain transactions between consumers covered in section 2.2 are excepted from this rule. Certain other exceptions are covered in Article III and Article XI.) If the consumer is unable to give up points exactly equal to the point value of the foods acquired by him because he does not have 'stamps,' certificates, ration coupons, or ration checks of sufficiently small value to make up the proper amount, he may give up, and the transferor may accept stamps, certificates, ration coupons, or ration checks of the nearest higher value and the transferor must return the excess points to the consumer in the form of tokens."

"Sec. 10.8. *Transferor may not use points he receives in advance until foods are transferred*. (a) A transferor may receive points from his transferee before he actually transfers the foods covered by this

order. In that case, he may not use points so received, to get other such foods, until he has actually transferred to the transferee foods worth that number of points."

"Sec. 16.8. *How ration coupons are issued*—(a) *General.* Whenever a district office, or the Washington Office of the Office of Price Administration, or any other person, is authorized to issue one or more certificates or checks to any person, it shall, unless otherwise directed by the Office of Price Administration, issue ration coupons instead, if he is not entitled to have a ration bank account, or whose ration bank account has been closed under section 9.6 of this order. However, ration coupons may be issued to an industrial consumer whether or not he has a ration bank account and to a retailer who does not have, and is not required to have, a ration bank account.

* * * * *

"(b) *How ration coupons are issued and used.* Ration coupons are coupons designated 'ration coupons' which are issued in denominations of 1, 5, 20, 100 and 1,000 points by the Office of Price Administration. Red ration coupons may be used for the acquisition of all foods covered by this order. They need not be endorsed, and are good at any time. In all other respects they may be used in the same way as 'stamps', certificates and ration checks. However, a person who does not have and is not required to have a ration bank account may use ration coupons to give change to any person other than a consumer, but he may use for this purpose only ration coupons having

denominations of 1, 5, or 20 points. (This does not affect the rule that a person who has or is required to have a ration bank account may give up or return points only in the form of a check. The only exception to that rule is in the use of tokens to give change to consumers.)”

“Sec. 20.1. *Additional prohibitions.* * * *

“(d) No person may transfer foods covered by this order for a stamp, token, certificate or ration check if he knows or has reason to believe that it is not valid or that the person tendering it is not entitled to use it.”

